



April 24, 2001

Mr. Julian W. Taylor, III
The Law Offices of Wallace Shaw, P.C.
P.O. Box 3073
Freeport, Texas 77542-3073

OR2001-1614

Dear Mr. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146372.

The City of Clute (the "city"), which you represent, received a request for a specified 911 tape recording. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. Your comments also raise section 552.108 of the Government Code, but withdraw your argument under that exception. The included materials reference a previous request for the subject 911 tape. You represent that the previous request was verbal rather than written. The Public Information Act applies only to written requests for information received by governmental bodies. *See* Gov't Code 552.301(a).

The Public Information Act requires a governmental body that wishes to withhold requested information to provide to this office a copy of the specific information requested, or a representative sample thereof, labeled to indicate which exceptions apply to which parts of the information, within fifteen business days of its receipt of the request for information. Gov't Code § 552.301(e). Contrary to your assertions, the requirements of section 552.301 apply to requests for information that relate to ongoing criminal investigations or prosecutions. If the governmental body does not comply with section 552.301, the information requested is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302. Such a compelling reason is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977).

The subject written request for information is marked as having been received by the city on February 6, 2001. The city submitted the responsive information to this office by United States Mail post-marked March 8, 2001. Therefore, the city failed to timely submit this

information. Section 552.103 of the Government Code is a permissive exception, as distinct from exceptions which are intended to protect information deemed confidential by law or which protect the rights of third parties. *See, e.g.*, Open Records Decision No. 473 (1987). The interests protected by section 552.103 do not provide a compelling reason for withholding information. *Id.* Therefore, the responsive information must be released to this requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

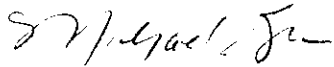
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns".

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/rr

Ref: ID# 146372

Encl: Submitted documents

cc: Mr. Reginald E. McKamie, Sr.
1210 Antoine Drive, Suite 100
Houston, Texas 77055
(w/o enclosures)